

UNITED STATES DISTRICT COURT
 DISTRICT OF SOUTH CAROLINA
 FLORENCE DIVISION

BRAD R. JOHNSON,)	Civil Action No. 4:21-cv-0815-TLW-TER
)	
Plaintiff,)	
)	
-vs-)	
)	ORDER
)	
PENNYMAC LOAN SERVICES, LLC,)	
STANDARD GUARANTY INSURANCE)	
COMPANY, and ASSURANT, INC,)	
)	
Defendant.)	
)	

Plaintiff, who is proceeding pro se, brings this action alleging claims under the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961 et seq., the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692 et seq., and the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. § 2607, et seq., as well as a state law claim for breach of contract accompanied by fraud. Presently before the Court is Plaintiff's Motion to Remove Stay (ECF No. 71). Defendants filed a Response (ECF No. 73) and Plaintiff filed a Reply (ECF No. 75). All pretrial proceedings in this case were referred to the undersigned pursuant to the provisions of 28 U.S.C. § 636(b)(1)(A) and (B) and Local Rule 73.02(B)(2)(d), DSC.

Previously in this action, Defendants filed Motions to Dismiss in which they sought dismissal and/or abstention because Plaintiff was already litigating the same claims against the same parties in the Forsyth County District Court. Although a ruling had already been entered dismissing Plaintiff's claims in that case, other claims remained pending. In the Report and Recommendation, the undersigned noted that all of the requirements for res judicata to apply to the present case were present except for the finality requirement because other claims remained pending in the Forsyth

County District Court. See Report and Recommendation (ECF No. 53) p. 10 ,n. 2. Applying the Colorado River abstention doctrine, the undersigned recommended that the case be stayed pending the outcome of the Forsyth County District Court case, which was adopted by the District Judge and the case was stayed. Report and Recommendation (ECF No. 53); Order (ECF No. 61).

Subsequent to the stay in this case, PennyMac voluntarily dismissed the remaining claim it had against Plaintiff in the Forsyth County District Court case without prejudice.¹ Plaintiff then filed an appeal of the dismissal of his counterclaims/third-party claims. The North Carolina Court of Appeals affirmed the trial court's dismissal of Plaintiff's counterclaims/third-party claims. See Opinion (ECF No. 66-1). Plaintiff moved for the Court of Appeals to reconsider the panel's opinion en banc. On May 23, 2023, the motion was denied. See Order on Motion for En Banc Rehearing (ECF No. 72-4). Plaintiff then filed a Petition for Discretionary Review with the North Carolina Supreme Court, which was denied on December 13, 2023. See PennyMac Loan Servs., LLC v. Johnson, No. 145P23, 2023 WL 8716463, at *1 (N.C. Dec. 13, 2023).

Because the case Forsyth County District Court case is final, the exceptional circumstances warranting Colorado River abstention are no longer present. Thus, Plaintiff's Motion to Remove the Stay (ECF No. 71) is **GRANTED** and the stay in this matter is lifted. **The parties have until Monday, January 8, 2024 to file supplemental briefing on the applicability of res judicata to**

¹As set forth in more detail in the Report and Recommendation, PennyMac filed an action in Forsyth County District Court to reform Plaintiff's Deed of Trust and Plaintiff filed counterclaims/third party claims against PennyMac, SGIC, and Assurant, the same Defendants in this action. The counterclaims/third party claims were dismissed with prejudice and at the time the present action was filed, PennyMac's deed reformation claim was still pending. See Report and Recommendation p. 4.

the claims raised in this case.²

IT IS SO ORDERED.

s/Thomas E. Rogers, III

Thomas E. Rogers, III
United States Magistrate Judge

December 21, 2023
Florence, South Carolina

²The undersigned will consider the res judicata arguments initially briefed in Assurant's and SGIC's Motion to Dismiss (ECF No. 23), Supplement (ECF No. 30), Response (ECF No. 42), Reply (ECF No. 49), and Sur Reply (ECF No. 50) along with the additional briefing submitted in response to this Order.